Mat Yassin bin Dollah v Ibrahim bin Hussin & Anor

HIGH COURT (KOTA BHARU) — CIVIL APPEAL NO 12–12–1995
NIK HASHIM JC
13 AUGUST 1996

Civil Procedure *— Appeal — Record of appeal — Failure to include a copy of decision — Whether such failure would render record of appeal defective — Whether the requirements of O 49 r 3A(1) ought to be complied with strictly — Whether appeal was properly before the court — Whether appeal ought to be struck out — Subordinate Courts Rules 1980 O 49 r 3A(1)(d)*

Before the start of the hearing of the appeal, counsel for the respondents raised a preliminary objection on a point of law in that the appeal record did not contain a copy of the decision of the court appealed from, thereby contravening O 49 r 3A(1)(d) of the Subordinate Courts Rules 1980 ('the SCR'). Counsel for the appellant conceded the omission to include the decision in the appeal record, but argued that the requirement of the rule was only technical in nature which had no legal consequence and as such, she urged the court to proceed with the hearing of the appeal on the merit of the case instead.

Held, striking out the appeal with costs:

Order 49 r 3A(1) of the SCR imposes a duty on the appellant to prepare the requisite number of copies of the appeal record to contain six items, one of which is the decision: r 3A(1)(d). The decision here means the order of the court appealed from, approved and sealed by the registrar. A draft order or an uncertified photostat copy of the order is not a decision of the court.

Order 49 r 3A(1) of the SCR is mandatory in its terms by reason of the word 'shall' in the rule. Accordingly, strict compliance with its provision is called for and failure to enclose any one of the items in the record as required by the rule will render the appeal record defective. Also, the appeal record without the decision is incomplete. An incomplete record is as good as no record at all. Without the decision in the record, the appellate court would not be able to verify the accuracy of the court's order when considering the appeal. Therefore, the appeal record in the present case was not properly before the court and thus, the appeal ought to be struck out (see pp 683H–I and 684B–F); *Teoh Soon Kok t/a TSK Supplies Trading v MBf Finance Bhd* [1996] 2 CLJ 130 and *Datuk Bandar Kuala Lumpur v Seman bin Amat and other cases* [1996] 3 CLJ 263 followed.

[Bahasa Malaysia summary

Sebelum permulaan pembicaraan rayuan, peguam penentang-penentang menimbulkan bantahan permulaan atas persoalan undang-undang bahawa rekod rayuan tidak mengandungi sesalinan keputusan mahkamah yang dirayu, dengan itu melanggar A 49 k 3A(1)(d) Kaedah-Kaedah Mahkamah Rendah 1980 ('KMR'). Peguam perayu

mengaku peninggalan untuk memasukkan keputusan dalam rekod rayuan, tetapi menghujahkan bahawa keperluan kaedah itu hanya bersifat teknikal yang tidak mempunyai apa-apa akibat undang-undang dan oleh yang demikian, beliau menggesa mahkamah supaya meneruskan pembicaraan rayuan atas merit kes sebaliknya.

Diputuskan, membatalkan rayuan dengan kos:

Aturan 49 k 3A(1) KMR mengenakan kewajipan ke atas perayu untuk menyediakan salinan rekod rayuan sebanyak mana yang perlu supaya mengandungi enam perkara, yang mana satu daripadanya adalah keputusan: k 3A(1)(d). Keputusan di sini bermakna perintah mahkamah yang dirayu, diluluskan dan dimeteraikan oleh pendaftar. Suatu perintah deraf atau salinan fotostat perintah yang tidak disahkan tidak merupakan keputusan mahkamah.

Aturan 49 k 3A(1) KMR adalah mandatori dalam termanya disebabkan perkataan 'harus' dalam kaedah itu. Lantaran itu, pematuhan ketat peruntukannya diperlukan dan kegagalan untuk memasukkan mana-mana satu daripada perkara dalam rekod seperti yang dikehendaki oleh kaedah itu akan menyebabkan rekod rayuan menjadi cacat. Juga, rekod rayuan tanpa keputusan adalah tidak lengkap. Rekod yang tidak lengkap adalah sama seperti tiada rekod sama sekali. Tanpa keputusan dalam rekod, mahkamah rayuan tidak akan dapat mengesahkan ketepatan perintah mahkamah ketika mempertimbangkan rayuan. Maka, rekod rayuan dalam kes ini tidak dibuat dengan betul di hadapan mahkamah dan justeru itu, rayuan patut dibatalkan (lihat ms 683H–I dan 684B–F); *Teoh Soon Kok t/a TSK Supplies Trading v MBf Finance Bhd* [1996] 2 CLJ 130 dan *Datuk Bandar Kuala Lumpur v Seman bin Amat and other cases* [1996] 3 CLJ 263 diikut.

Notes

For cases on record of appeal, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 624–636.

Cases referred to

Datuk Bandar Kuala Lumpur v Seman bin Amat and other cases [1996] 3 CLJ 263 (folld)

Ratnam v Cumarasamy & Anor [1965] 1 MLJ 228 (refd)

S Ravi a/l G Suppiah v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1995] 2 CLJ 152 (refd)

Sykt Telekom Malaysia Bhd v Business Chinese Directory Sdn Bhd [1994] 2 MLJ 420 (refd)

Teoh Soon Kok t/a TSK Supplies Trading v MBf Finance Bhd [1996] 2 CLJ 130 (folld)

Legislation referred to

Subordinate Courts Rules 1980 O 49 r 3A(1)(d)

Nor Atikah bte Mahyidin (*Sandu & Co*) for the appellant.
Ahmad Zaki bin Mohd Daud (Federal Counsel) for the respondents.

Cur Adv Vult

Nik Hashim JC: This is an appeal against the decision of the sessions court judge at Kota Bharu, wherein he dismissed the appellant's claim for damages arising out of a motor road accident.

Before the start of the appeal, En Ahmad Zaki, the learned federal counsel for the respondents, raised a preliminary objection on a point of law in that the appeal record did not contain a copy of the decision of the court appealed from, thereby contravening O 49 r 3A(1)(d) of the Subordinate Courts Rules 1980 ('the SCR'), and cited *Teoh Soon Kok t/a TSK Supplies Trading v MBf Finance Bhd* [1996] 2 CLJ 130 in support of his objection.

The decision of the learned judge was made after trial. Hence, O 49 r 3A(1) applies in this case. Order 49 r 3A(1) of the SCR provides:

> When the appellant who is represented by a solicitor has complied with the requirements of rule 2 of this Order, the appellant shall prepare the requisite number of copies of the appeal record and record shall contain copies of —
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> (a) the relevant pleadings;
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> (b) the notes of evidence;
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> (c) the grounds of judgment, provided that the absence of the grounds of judgment shall not prevent the appellant from proceeding with his appeal;
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> (d) the decision;
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> (e) the notice of appeal;
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> (f) all such documentary exhibits and other documents the parties shall consider relevant for the purposes of appeal.

Puan Nor Atikah, who appeared for the appellant, conceded the omission to include the decision in the appeal record, but argued that the requirement of the rule was only technical in nature which has no legal consequence and as such, she urged the court to proceed with the hearing of the appeal on the merit of the case instead.

In my judgment, O 49 r 3A(1) imposes a duty on the appellant to prepare the requisite number of copies of the appeal record to contain six items, one of which is the decision: r 3A(1)(d). The decision (often mistaken for the grounds of judgment) here means the order of the court appealed from (r 1) and approved and sealed by the registrar. A draft order or an uncertified photostat copy of the order is not a decision of the court. In *Teoh Soon Kok*, the respondent raised almost a similar objection, albeit under a different rule, that the appellant failed to file a copy of the decision in the appeal record as required by r 6(3)(d). There, the appellant filed merely a copy of the draft judgment of the court in the appeal record. In upholding the preliminary objection and dismissing the appeal with costs, Mohd Hishamudin J held that: (i) a draft judgment is not a decision for the purpose of r 6(3)(d); (ii) the decision in r 6(3)(d) means a sealed document

approved by the registrar under O 29 r 9(4); and (iii) uncertified photostat copies are not copies for the purpose of sub-r (3)(d).

In the result, the appeal record without the decision is incomplete. In my view, an incomplete record is as good as no record at all. The decision is very important. Without the decision in the record, the appellate court would not be able to verify the accuracy of the court's order when considering the appeal.

Order 49 r 3A(1) is mandatory in its terms by reason of the word 'shall' in the rule (see *Datuk Bandar Kuala Lumpur v Seman bin Amat and other cases* [1996] 3 CLJ 263). Accordingly, strict compliance with its provision is called for and failure to enclose any one of the items in the record as required by the rule, in my view, will render the appeal record defective. It has been said time and again that rules of court must be obeyed (*Ratnam v Cumarasamy & Anor* [1965] 1 MLJ 228) and must be meticulously and faithfully complied with (per Low Hop Bing JC (as he then was) in *S Ravi all G Suppiah v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1995] 2 CLJ 152 at p 154). Failure to comply with them will lead to chaos in the conduct of litigation (*Sykt Telekom Malaysia Bhd v Business Chinese Directory Sdn Bhd* [1994] 2 MLJ 420 at p 423, per Eusoff Chin SCJ (as he then was)).

Thus, without the decision and following *Teoh Soon Kok*'s case, I hold that the appeal record in the present case was not properly before the court. The record suffered from a serious defect for not being in compliance with the strict rules of O 49 r 3A(1)(d) of the SCR. Since the objection does not involve the merit of the case, the proper order, to my mind, is to strike out the appeal with costs to the respondent. I therefore made the order accordingly.

Order accordingly.

Reported by Loo Lai Mee